

# Potala request denied by State Supreme Court, Kirkland building held to 59 units

By TJ MARTINELL  
Kirkland Reporter  
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The legal battle between the city of Kirkland and Potala Village over the number of units allowed on the property has finally come to an end.

The State Supreme Court denied a request on Feb. 4 by Potala Village that the court review the Aug. 25, 2014, ruling by the Washington Court of Appeals, Division I.

The Court of Appeals had rejected Potala Village's argument that the filing of a complete application for a shoreline substantial development permit for a portion of the Potala Village project on Feb. 23, 2011 established vested rights to the February 2011 zoning or other land use control ordinances for the entire project. Potala Village then filed a petition for discretionary review with the Washington Supreme Court.

Attorneys for Potala Village, LLC owner Lobsang Dargey filed a petition to the Supreme Court in response to the ruling by the Court of Appeals, which sided with the city over whether or not the developer had vested rights to the entire property on Lake Washington Boulevard prior to zoning code changes that would limit the number of units allowed.

The controversy over the Potala Village project started in 2011, when Dargey originally planned to have 143 units. After protests by residents over concerns about traffic problems on Lake Washington Boulevard, the City Council placed a six-month emergency moratorium on all building permits in the business neighborhood zones in November 2011. Before the November 2011 moratorium, however, Potala Village had submitted a completed shoreline substantial development permit, which the city approved in January 2013, but did not file for a building permit application.

The council eventually passed new zoning regulations, placing a maximum limit on the number of units per acre allowed in business neighborhood zoning, which reduced the number of units Potala Village could build down to 60.

Dargey then took the city to King County Superior Court in order to build according to the original zoning code. His attorney argued that a completed shoreline substantial

development permit was sufficient to have vested rights to the entire property and thus could operate under the zoning codes in place at the time the application was filed.

The superior court sided with Potala Village, ruling they had vested rights to the entire property before the city imposed its moratorium. In the Court of Appeals, however, the judge ruled in favor of the city, concluding the building permit was necessary to have vested rights over the property and that Potala Village failed to cite any law preventing them from filing a building permit application before the moratorium.

In their petition to the Supreme Court, Potala Village attorneys claimed they did not file for a building permit application because the city informed them that they would not have accepted it until after changes were made.

Additionally, when they attempted to submit one during the moratorium, the petition further claimed, it was rejected by the city.

The petition also argued that a shoreline permit was all that was necessary to have vested rights, because it is “the most environmentally protective regulation and takes into account all applicable zoning and land use regulations.”

Dargey’s attorney argued that the city only changed its mind about the site’s vested rights when public opposition to the project grew over traffic concerns, as the mixed-use building is located off of a one-lane road in both directions. The petition cites a Washington State Supreme Court ruling, *City of Bellevue v. West Main Assoc.*, in which the court found that the city’s discretion to change zoning regulations based upon the developer’s proposals violated the property owner’s right to due process.

The petition also claimed the Court of Appeals ruling contradicted at least 60 years of common law doctrine protecting vested rights to property and in doing so made the vested rights doctrine “only available on a statutory basis.”

Kirkland’s City Attorney Robin Jenkinson said that common law doctrine has been replaced by provisions passed by the state legislature. She cited *Abbey Road Group v. City of Bonney Lake* decision, in which the Supreme Court held that the developer failed to vest its rights to develop a 575-unit condominium complex in the city by filing a site plan review application without also filing a complete building permit application. The developer had planned to build 24 buildings but before they submitted a site development permit application the city passed an ordinance rezoning the property to a new category that prohibited them from building the proposed condominium, according to a description provided by Eisenhower Carlson PLLC.

TJ MARTINELL, Kirkland Reporter Reporter  
tmartinell@kirklandreporter.com or 425-822-9166